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10/082,640	02/25/2002	Jingjun Cao	10745/47	3665

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EXAMINER

TRAN, PHILIP B

ART UNIT

PAPER NUMBER

2155

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/082,640

Applicant(s)

CAO ET AL.

Examiner

Philip B Tran

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/13/02 & 2/27/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 U.S.C. § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 6-7, 10, 12-16, 19-20, 23 and 25-27 are rejected under 35 U.S.C. § 102(e) as being anticipated by Presley, U.S. Patent Application Publication No. US 2003/0105838 A1.

Regarding claim 1, Presley teaches a method for an operator to monitor access network services available to an end device, where the end device communicates in a heterogeneous network environment (= managing an enterprise of configurable components) [see Abstract], the method comprising:

a) instructing the end device to determine available access networks located with the heterogeneous network environment (determining if the resource exists and the available capacity) [see Paragraph [0051]];

b) collecting access network information from at least one node within the heterogeneous network (= configuring, validating and managing the configuration

parameters of a plurality of systems interconnected over the network) [see Paragraphs [0029 & 0034-0035]]; and

c) making the access network information available to the operator (= allowing system administrators and other authorized users to view, change history, and if authenticated, allowing changes to the managed systems) [see Paragraph [0063]].

Regarding claim 2, Presley further teaches the method of claim 1, further including: d) providing the access network to the end device in accordance with the collected information [see Paragraphs [0062-0063]].

Regarding claim 3, Presley further teaches the method of claim 1, wherein b) comprises generating a probe [see Paragraphs [0035 & 0066 & 0069]].

Regarding claims 6-7, Presley further teaches the method of claim 3 wherein the probe is initiated automatically and occurs periodically [see Abstract and Paragraph [0035]].

Regarding claim 10, Presley further teaches the method of claim 3 wherein the probe is initiated by a user of the end device [see Paragraph [0063]].

Regarding claims 12-13, Presley further teaches the method of claim 1, wherein a Hyper Operator provides the access network to the end device and determines available access networks from the collected information [see Paragraph [0063]].

Regarding claim 14, Presley further teaches the method of claim 1 further including a probing server, wherein the probing server sends instructions to the end device to control probing (= management system 11) [see Fig. 1].

Claims 15-16 are rejected under the same rationale set forth above to claims 1-3.

Claims 19-20 are rejected under the same rationale set forth above to claims 6-7.

Claim 23 is rejected under the same rationale set forth above to claim 10.

Claims 25-27 are rejected under the same rationale set forth above to claims 12-14.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-5, 8-9, 11, 17-18, 21-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Presley, U.S. Pat. Application Pub. No. US 2003/0105838 A1 in view of Beigi et al (Hereafter, Beigi), U.S. Pat. No. 6,363,056.

Regarding claims 4-5, Presley does not explicitly teach the probe comprises a tracer packet and the tracer packet includes a format substantially similar to an application data Internet protocol (IP) packet with the addition of heterogeneous access network tracking (HANT) data. However, Beigi, in the same field of network performance monitoring endeavor, discloses probing packet in the Internet network environment includes a format substantially similar to an application data Internet protocol (IP) packet [see Col. 7, Lines 1-31]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Beigi into the teaching of Presley in order to generate a probing packet includes a format substantially similar to an application data Internet protocol (IP) packet for enabling the monitoring of network access and performance in the Internet network environment.

Regarding claims 8-9, Presley does not explicitly teach the probe is initiated upon the occurrence of an event wherein the event comprises a bandwidth of the end device being below a determined level. However, Beigi, in the same field of network performance monitoring endeavor, discloses probing in the event to monitor bandwidth [see Abstract]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Beigi into the teaching of Presley in order to quickly identify the bandwidth of the device in the network and the overall network and thus managing the network access and traffic more efficiently.

Regarding claim 11, Presley does not explicitly teach wherein b) comprises extracting the probe from the datastream, storing access network information in the probe, and returning the probe to the datastream. However, Beigi, in the same field of network performance monitoring endeavor, discloses obtaining packet from the data path and detecting probe and sending the probe packet back to the data path [see Fig. 8]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Beigi into the teaching of Presley in order to quickly identify the probe packet and thus managing the network access and traffic more efficiently.

Claims 17-18 are rejected under the same rationale set forth above to claims 4-5.

Claims 21-22 are rejected under the same rationale set forth above to claims 8-9.

Claim 24 is rejected under the same rationale set forth above to claim 11.

#### ***Other References Cited***

5. The following references cited by the examiner but not relied upon are considered pertinent to applicant's disclosure.

A) Kikuchi et al, U.S. Pat. No. 6,614,763.

B) Engel et al, U.S. Pat. No. 6,115,393.

C) Davis et al, U.S. Pat. No. 6,260,062.

D) Vaid et al, U.S. Pat. No. 6,502,131.

E) Anand et al, U.S. Pat. No. 6,748,436.

F) Wilson et al, U.S. Pat. No. 6,714,976.

G) Schneier et al, U.S. Pat. Application Pub. No. US 2002/0087882 A1.

H) Yoda et al, U.S. Pat. Application Pub. No. US 2001/0014093 A1.


I) Smith et al, U.S. Pat. Application Pub. No. US 2004/0019656 A1.

6. A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE THREE MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION. FAILURE TO RESPOND WITHIN THE PERIOD FOR RESPONSE WILL CAUSE THE APPLICATION TO BECOME ABANDONED (35 U.S.C. § 133). EXTENSIONS OF TIME MAY BE OBTAINED UNDER THE PROVISIONS OF 37 CAR 1.136(A).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tran whose telephone number is (571) 272-3991. The Group fax phone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam, can be reached on (571) 272-3978.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

  
Philip B. Tran  
Art Unit 2155  
March 15, 2005